In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 576

CULLEN HUCKABY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Michigan, petitioner was convicted and sentenced on four counts charging unlawful possession of a still, the possession and fermentation of mash, unlawful possession of distilled spirits, and working in an unregistered distillery. While his appeal was pending, he filed in the district court a motion for a new trial on the ground of newly discovered evidence, alleging, inter alia, governmental wiretapping with respect to the present case. Following a hearing, the district judge denied the motion, finding the testimony concerning the alleged wiretapping "fantastic" (Pet. 8). The appeal

then proceeded; the court of appeals entered an order apparently affirming both the conviction and the denial of the motion for a new trial (see Pet. 6a in No. 394, this Term).

In No. 394, this Term, petitioner has filed a petition for a writ of certiorari from the court of appeals' order raising only the questions which he had made the ground of his motion for a new trial. After the government's response to that petition had been filed, the court of appeals issued an opinion (Pet. 10-11) specifically affirming the district court's denial of new trial, from which ruling petitioner had taken a separate appeal (see Pet. App. B). The instant petition for a writ of certiorari seeks review of this decision.

As in No. 394, this Term, there is no occasion for review by this Court. The court below found insubstantial, as had the district court, the claim that the alcohol and tax agents had committed perjury when they testified that they had smelled the odor of fermenting mash fifteen or twenty feet from petitioner's house (see Pet. App. A & B.). Moreover, as we pointed out in our Brief in Opposition in No. 394 (pp. 4-5), there is not the slightest factual support for the contention that there was governmental electronic surveillance in this case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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